

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Anan Abu-Taleb

No. 92-01816

Name of Respondents

Rodman & Renshaw, Inc.  
James McAnally

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REPRESENTATION OF PARTIES

For Claimant: James E. Dahl, Esq. of James E. Dahl & Associates, Chicago, Illinois.

For Respondents: Howard L. Teplinsky, Esq. of Rudnick & Wolfe, Chicago, Illinois.

CASE INFORMATION

Statement of Claim filed: May 28, 1992.

Claimant's Submission Agreement signed on: May 20, 1992.

Joint Statement of Answer and Motion to Dismiss filed by Respondents, Rodman & Renshaw, Inc. and James McAnally on: July 24, 1992.

Respondent Rodman & Renshaw, Inc.'s Submission Agreement signed on: July 21, 1992.

Respondent James McAnally's Submission Agreement signed on: October 15, 1992.

Claimant's Response to Respondents' Affirmative Defenses and Motion to Dismiss filed: September 17, 1992.

### HEARING INFORMATION

Hearing dates: February 17, 1993. Two (2) sessions.  
February 18, 1993. Two (2) sessions.

Hearing Location: Chicago, Illinois.

### CASE SUMMARY

Claimant, Anan Abu Taleb ("Claimant") alleged violation of Section 10(b) of the Securities Exchange Act and SEC Rule 10b-5, breach of fiduciary duty, violation of the Illinois Consumer Fraud Act, misrepresentations, common law fraud, breach of contract, unsuitability, and churning by Respondents, Rodman & Renshaw, Inc. ("RR") and James McNally ("McAnally") or referred to collectively as ("Respondents"). The allegations arose out of transactions in Claimant's account involving options and other securities more fully discussed during the hearing. Claimant asserted that Respondents were made fully aware that the purpose of the account was for Claimant's children's education, and that Claimant had been interested in secure investments, preservation of capital and long-term growth. Claimant also alleged that the representations made by the Respondents caused Claimant to open an account with them, and Claimant further alleged that the representations were false and made with the knowledge that the statements were not true. Claimant asserted that there had been more than 40 different sales and purchases of securities, including options, during the period of February 26, 1991 through June, 1991. Lastly, Claimant alleged that he had not become aware of the fraud, churning and/or reckless mismanagement in his account until July 26, 1991.

In their joint Answer, Respondents denied each and every allegation contained in the Statement of Claim. In addition, Respondents asserted the following affirmative defenses and Motion to Dismiss:

1. Claimant's claims arising out of SEC Rule 10b-5 are barred by the applicable statute of limitations. Although Claimant knew of the activity which forms the basis of his 10b-5 claim in February of 1991, the Statement of Claim was not filed until May 20, 1992.
2. Claim VI purports to state a claim for breach of an oral agreement entered into in February, 1991. The alleged agreement is barred by the statute of frauds. Moreover, the parties' relationship was not controlled by any oral agreement, or any implied term of an express agreement, but was defined by the express terms of the three account agreements executed by Claimant.
3. Claims II through V fail to state claims on which relief may be granted.

### **RELIEF REQUESTED**

Claimant requested an award in his favor, in the amount of \$45,000.00, or such other amounts as may be established by the proofs to be the loss sustained by the Claimant, plus attorneys' fees, interest, and costs incurred in connection with the prosecution of this action.

Respondents requested that the Statement of Claim be dismissed in its entirety.

### **OTHER ISSUES CONSIDERED & DECIDED**

On July 24, 1992, Respondents filed a Motion to Dismiss the Statement of Claim. On September 17, 1992, Claimant filed his response to the Motion to Dismiss. After review of the Motion, the pleadings, and the response, the undersigned arbitrators denied the Motion.

The parties have agreed that the Award in this matter may be executed by counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the originals remain on file with the NASD.

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents' Motion to Dismiss, which can be found in their Answer to the Statement of Claim, is denied in its entirety.
2. Respondents, Rodman & Renshaw, Inc. and James McAnally are jointly and severally liable for, and shall pay to Claimant, Anan Abu-Taleb, the sum of \$39,095.94 as satisfaction of his claims herein.

### **OTHER COSTS**

3. Each party shall bear their own costs of this arbitration, including attorneys' fees, except as set forth more fully below.
4. Respondents, Rodman & Renshaw, Inc. and James McAnally are jointly and severally liable for, and shall pay to Claimant, Anan Abu-Taleb, the sum of \$520.00 as an award of the costs and filing fees associated with bringing this arbitration.

### **FORUM FEES**

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the following forum fees

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are assessed:

4 hearing sessions X \$400.00 = \$1,600.00

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the NASD shall retain the nonrefundable filing fee in the amount of \$120.00, and shall retain the hearing session deposit in the amount of \$400.00 previously paid to the NASD by the Claimant.

Additional forum fees in the amount of \$1,200.00 are assessed jointly and severally against the Respondents.

Pursuant to Sections 43(c) and 30(b) of the Code of Arbitration Procedure, the NASD shall retain the \$400.00 postponement fee previously paid to the NASD by Respondent Rodman & Renshaw, Inc. in connection with the postponement of the December 18, 1992, hearing date.

Fees are payable to the National Association of Securities Dealers, Inc.

#### CONCURRING ARBITRATORS

Dated:

March 16, 1993

/s/John W. Jerak  
John W. Jerak  
Presiding Chair  
Public Arbitrator

March 16, 1993

/s/David Muschler  
David Muschler  
Public Arbitrator

March 16, 1993

/s/Frank F. Foy  
Frank F. Foy  
Industry Arbitrator

Date of Service by the NASD: March 17, 1993